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(Cont.)

control system for providing an indication to said control system that the product has not reached a limit on use specified for it in order to entitle said caller to gain access to said certain operations of said specific processing format;

said base substrate having printed thereon additional machine-readable data corresponding in part to said unique identification data in accordance with a relationship developed by a provider of said product; and

wherein said product is purchased by a caller at a retail facility.

REMARKS

This amendment and response is submitted further to the Office Action dated January 15, 2002. Claims 24-49 are pending, all of which stand rejected. Applicant urges the Examiner to reconsider the application based on the amendments and arguments presented here.

In paragraph 1 of the office action, the Examiner provisionally rejected claims 24-49 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 223-334 of co-pending application no. 08/305,822. Applicant acknowledges the Examiner's provisional rejection based on nonstatutory double patenting. The Examiner has indicated that although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference resides in the particular indicia printed on the substrate such as the telephone number being an 800 number. The Examiner takes the position that it would have been obvious to one of ordinary skill in the art to provide toll free number indicia, since the particular type of indicia would depend on the intended use of the assembly and the desired information to be displayed. Applicant notes that the Examiner's analysis is consistent with the Examiner's position that simply altering the content of the printed matter

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does not impact patentability because the relationship between the printed matter and the substrate is merely one of support and display. In any event, if the rejection was not provisional, Applicant could obviate such a rejection by filing a terminal disclaimer. But the rejection is provisional because it is based upon a pending application and another co-pending application that is not yet issued. Applicant can only file a terminal disclaimer with respect to an issued patent. Therefore, Applicant cannot overcome the provisional rejection at this time. Applicant also understands that if the "provisional" double patenting rejection in this application is the only rejection remaining in the application, the Examiner will then withdraw that rejection and permit the application to issue as a patent (MPEP § 804). At this point, Applicant can merely declare his intention that in the event co-pending application no. 08/305,822 issues before the present application, with claims 223-334 of the same scope as presently pending, he will submit a terminal disclaimer.

In paragraphs 2 and 3 of the office action, claims 24, 28-33, 35, 38-41, and 45-49 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Barr et al. (3,556,530). In paragraph 4 of the office action, claims 25-26, 35, and 43 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Barr in view of Roberts (4,677,553). In paragraph 5 of the office action, claims 27, 34, 37, 42, and 44 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Barr in view of Goldman et al. (4,398,708).

Applicant respectfully submits that there are differences between Applicant's claims and the references asserted by the Examiner. The Examiner acknowledges that Barr does not disclose "*indicia including a visual symbolic graphic representation and the additional data including a machine readable code.*" The Examiner fills that void with Roberts.

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Applicant has amended the independent claims to further clarify them. All the independent claims here recite a concealing layer over at least a portion of the substrate that bears at least a portion of the unique identification number and machine-readable indicia. The concealing layer conceals at least a portion of the unique identification number. Barr discloses covering means 22 and 32, however that covering means only covers game-playing areas 20 and 30. Barr's game playing indicia includes a "telephone number" in case of a win or no indicia. At best, Barr can be taken to illustrate a cover over the telephone number, which in Barr signifies a possible win. Therefore, Barr does not illustrate a cover over the portion of his card substrate that bears a unique identification number associated with the card. In fact, Barr's card substrate does not appear to disclose a unique identification number associated with the card.

The Examiner suggests a combination of Barr with Roberts indicating that to provide machine-readable indicia on Barr's substrate would be obvious in order to provide tamper-proof capabilities for ensuring proper use of the lottery tickets. The reasons for such a combination are not understood. Barr's card substrate bear telephone number indicia. To provide such telephone number indicia in machine-readable form would appear to be of unnecessary value. In addition, Applicant is not clear as to how and why that would provide tamper-proof capability.

Accordingly, Applicant respectfully submits that the claims are distinct from a combination of the art asserted by the Examiner. Also, the references do not suggest the motivation to combine the references as urged by the Examiner.

The dependent claims are distinct at least by virtue of the combination of features that distinguish the independent claims for the combination of references asserted by the Examiner.

Finally, Applicant also requests change of title. Applicant notes that a copy of the prior application filed with the request for continuation was titled "TELEPHONIC-INTERFACE

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LOTTERY SYSTEM," but the request indicated the tile as "TELEPHONIC-INTERFACE TICKET," as amended during prosecution of the prior application. A change of the title was not formally requested, accordingly, a new title as indicated here is formally requested.

Favorable consideration and allowance of the claims pending here is respectfully requested.

Dated:

July 15, 2002

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Aug-12-2002 01:12pm From-A2D,LP

310-247-2864

T-167 P.014/019 F-507

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MARKED VERSION OF TITLE:

TELEPHONIC-INTERFACE [LOTTERY SYSTEM] PRODUCT

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MARKED VERSION OF CLAIMS:

24. (Amended) A product for use with a telephonic-interface control system accessed through a telephone communication facility from a telephone, said product to be processed by said telephonic-interface control system in accordance with one specific telephone processing format to be selected from a plurality of telephone processing formats, said product comprising:

a base substrate having printed thereon telephone number data which is to be entered by a caller via a telephone to thereby gain access to at least certain operations of said specific telephone processing format;

said base substrate further having printed thereon unique identification data relating to said specific telephone processing format which unique identification data is to be entered by a caller via said telephone to thereby gain access to said certain operations of said specific telephone processing format, said unique identification data further serving as a consumable key that is tested by said telephonic-interface control system to provide an indication that it has not been consumed by prior use before allowing said caller to gain access to said certain operations of said specific telephone processing format;

a concealing layer over at least a portion of the unique identification data; and

said base substrate still further having printed thereon additional machine-readable data corresponding at least in part to said unique identification data for verification to establish a correlation between at least certain of the additional machine-readable data and at least certain of the unique identification data for processing data relating to the [card] product including tracking the [card] product.

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26. (Amended) A product according to claim 24, wherein said additional data is a machine readable code which allows [the] a retailer from whom said caller directly purchases the product to automatically process data relating to said product maintained by said telephonic-interface control system.

28. (Amended) A product according to claim 24, wherein at least a portion of said unique identification data is concealed by [a] the concealing layer until purchased by said caller.

30. (Amended) A product according to claim 24, wherein said telephone number data printed on said base substrate which is entered by a caller is one from a plurality of called numbers [relates] relating to called terminal digital data automatically provided by said telephone communication facility to identify said one specific telephone processing format from said plurality of telephone processing formats.

32. (Amended) A plurality of products for use with a telephonic-interface control system accessed through a telephone communication facility from a telephone, said products to be processed by said telephonic-interface control system in accordance with at least one specific telephone processing format selected from a plurality of telephone processing formats, said plurality of products comprising:

at least one base substrate of at least certain of said plurality of products having printed thereon specific telephone number data which is to be entered by callers via a telephone to thereby gain access to certain operations of at least said one specific telephone processing format;

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said base substrate of each of said plurality of products having printed thereon a unique identification data relating to said specific telephone processing format which is to be entered by callers via said telephone to thereby gain access to said at least certain operations of one specific telephone processing format, said unique identification data tested by said telephonic-interface control system to provide an indication [of] that limits specified on the use of said products have been satisfied before allowing said callers to gain access to said at least certain operations of said one specific telephone processing format;

a concealing layer over at least a portion of the substrate that has at least a portion of the unique identification data printed thereon; and

said base substrate further having printed thereon additional machine-readable data correlating at least in part to said unique identification data in accordance with a relationship known to a provider of said products for control purposes.

33. (Amended) A plurality of products according to claim 32 wherein at least a portion of said unique identification data on said products is concealed by [a] the concealing layer until purchased by said caller.

36. (Amended) A product according to claim 32, wherein said base substrate further comprises:

a visual symbolic graphic representation indicating a name or a theme relating to said specific telephone processing format, said visual symbolic graphic representation being visible to said caller upon purchase.

41. (Amended) A product for use with a control system accessed through a telephone communication facility from a telephone instrument, said product to be processed by said control system in accordance with one specific format selected from a plurality of processing formats, each of said processing formats being identified with a different telephone number that provides access to it, said product comprising:

a base substrate having printed thereon telephone number data which is to be entered by a caller via said telephone instrument to thereby gain access to said specific telephone processing format;

a concealing layer on at least a portion of said base substrate concealing at least a portion of a unique identification data printed on said base substrate and relating to said specific telephone processing format, said unique identification data to be entered by a caller via said telephone instrument to thereby gain access to at least certain operations of said specific telephone processing format, said unique identification data tested by said control system for providing an indication to said control system that the product has not reached a limit on use specified for it in order to entitle said caller to gain access to said certain operations of said specific processing format;

said base substrate having printed thereon additional machine-readable data corresponding in part to said unique identification data in accordance with a relationship developed by a provider of said product; and

wherein said product is purchased by a caller at a retail facility.